UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 21 1993

REPLY TO THE ATTENTION OF:
R-19J

Mr. Myles E. Flint
Acting Assistant Attorney General
Land and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

RE: Settlement of CERCLA § 106 Enforcement
and § 107 Cost Recovery action
Accra Pac Site, Elkhart, Indiana.

This letter is to recommend that you sign the proposed Consent Decree attached hereto, which is a settlement of an action brought pursuant to §§ 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). Both of the defendants to this action, the current owner, the Estate of Warner Baker, and the former owner of the site, Accra Pac, Inc., are parties to the settlement.

This action arose when the Estate of Warner Baker, whose decedent had entered into an Administrative Order on Consent (AOC) with U.S. EPA, failed to comply with the terms of the AOC, which required the Estate to study and clean up the contamination present at the Accra Pac site. Accra Pac, Inc., the recipient of a Unilateral Administrative Order (UAO) with similar provisions, also failed to comply with the terms of the UAO. This matter was referred to the U.S. Department of Justice for the enforcement of these two administrative orders, and also for the recovery of U.S. EPA's response costs expended in connection with the site.

The proposed settlement requires the Defendants to perform groundwater and soil cleanup at the Accra Pac site, a non-NPL site, located in Elkhart, Indiana. The Defendants will also pay $250,000 of the Agency's past costs and U.S. EPA's oversight costs which will be incurred in supervising the site cleanup, and the Estate of Warner Baker will pay a stipulated $50,000 penalty for failure to comply with the AOC. The terms of the proposed consent decree are quite similar to the model RD/RA consent decree, although the covenant not to sue is limited to the work to be performed and the payments to be made pursuant to the decree. The Agency would retain its full enforcement authority in the event that U.S. EPA were to decide that additional response actions were necessary at the site,.

The public interest would be well served by the proposed consent decree, as the decree ensures the cleanup of the site to levels that would be protective of human health and the environment.

It is recommended that you approve, and indicate your approval by signing, the attached Consent Decree, a settlement of the judicial action United States v. Accra Pac, Inc., et al., Civ. No. H89-0113, in the Northern District of Indiana.

Sincerely yours,

Valdas V. Adamkus
Regional Administrator

Enclosures

cc: Steven A. Herman, Assistant Administrator, OE, U.S. EPA
Bruce Diamond, Director, CERCLA Enforcement, OWPE, U.S. EPA
John C. Cruden, Chief, EES, U.S. Department of Justice

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

CS-3T

ATTORNEY WORK PRODUCT/ENFORCEMENT CONFIDENTIAL/ FOIA EXEMPT

MEMORANDUM

DATE: JUL 09 1993

SUBJECT: 10-Point Settlement Analysis
Accra Pac Site--Elkhart, Indiana

FROM: Gail C. Ginsberg, Regional Counsel

TO: Valdas V. Adamkus
Regional Administrator

I. HIGHLIGHTS

The proposed settlement requires the Defendants to perform groundwater and soil cleanup at the Accra Pac site, a non-NPL site, located in Elkhart, Indiana. The Defendants will also pay $250,000 of the Agency's past costs and EPA's oversight costs which will be incurred in supervising the site cleanup, and one of the Defendants, the Estate of Warner Baker, will pay a $50,000 penalty for failure to comply with an Administrative Order on Consent (AOC). The terms of the proposed consent decree are quite similar to the model RD/RA consent decree. Although the provisions in the decree are similar to the model, Headquarters concurrence is not necessary since the site is not an NPL site, and therefore, the decree is not an RD/RA decree. In addition, since the settlement compromises between 25% and 50% of the total past and future costs for the site, Headquarters consultation, but not Headquarters concurrence, is required. However, the prior approval of the Acting Assistant Attorney General is necessary before this matter may be lodged with the court.

II. SETTLEMENT TERMS:

1. Total value of the settlement: Several hundred thousand to $ 3 million (estimated). The precise value of the settlement is difficult to ascertain. Since the site is a non-NPL site, there was no Record of Decision which set forth the types of technologies which will be utilized for the soil and

groundwater cleanup, nor were there sufficiently detailed cost estimates for the technologies contemplated. For this reason, the cleanup technologies which will be used at the site, as well as the need for and design of the (potentially required) air pollution control technology, are not specified within the terms of the consent decree or the Scope of Work. Instead, the proposed consent decree requires the Defendants to conduct an Engineering Design Study, after which they will propose the cleanup technologies which they prefer. After its review of the Engineering Design Study, EPA will select, based upon an administrative record, the technologies to be implemented at the site. Disagreements between the parties are subject to the dispute resolution provisions of the consent decree, which are virtually identical to the provisions of the model RD/RA consent decree. EPA's decision as to the appropriate site cleanup will be judged pursuant to the arbitrary and capricious standard.

2. Total value of the remedy: Also unknown, due to the factors mentioned in # 1, above.

3. Total amount of past costs: The decree provides that defendants will pay $250,000 out of approximately $498,037 in total U.S. reponse costs, as of March 31, 1993. The Estate of Warner Baker will also pay a stipulated penalty in the amount of $ 50,000 for its failure to comply with the AOC.

III. SITE HISTORY

Accra Pac, Inc. operated an aerosol packing plant at 2626 Industrial Parkway, Elkhart, Indiana until January, 1976 when an explosion and fire leveled the facility. At the time of the explosion, solvents and pesticides were stored in surface tanks. Apparently, no containment systems were in place, nor were any containment actions taken at the time of the fire.

Prior to the explosion and fire, in the Spring of 1975, residents living in the vicinity of the site (East Jackson area) had reported taste and odor problems in their water, which was derived from shallow wells. In May, 1976 EPA took samples of residential wells which disclosed eight volatile organic compounds. Six of the eight chemicals had been used at the Accra Pac plant; however, some of the chemicals were also used by other companies located in the same industrial park.

In January, 1977 Accra Pac conveyed the property to Warner P. and Florence G. Baker (deceased).

In May and June 1985 elevated levels of volatile organics, particularly TCE, were found in residential water wells in various locations in Elkhart, including the East Jackson neighborhood, in close proximity to the industrial park. In

response, EPA, in cooperation with the City of Elkhart, undertook to extend public water mains to residences in the area and/or to provide filters to affected properties.

In August 1985, the EPA authorized a contractor to assess the threat posed by the thirteen underground storage tanks still remaining on the former Accra Pac site. That investigation determined that soils on the property were contaminated and that the fluids remaining in the tanks contained volatile organic compounds.

The presence of "fingerprint chemicals" peculiar to Accra Pac's aerosol packaging business was later found downgradient of the site in the groundwater. ATSDR evaluated the levels of indicator chemicals found in the groundwater, and determined that they would cause a substantial human health threat if ingested, and that even if TCE had not been present in the groundwater, an emergency removal action still would have been justified. Given the potential synergistic effects between the indicator chemicals and the TCE, an even more substantial human health threat was possibly presented.

EPA began negotiations with Warner Baker, which resulted in an administrative order on consent, which called for the removal and disposal of all substances contained in the facility's underground tanks, the sampling of visibly contaminated soils to determine the extent of contamination and groundwater monitoring if the soil were found to be contaminated. Warner Baker died, but his estate undertook the activities specified in the AOC beginning in December 1986. However, all activities were suspended in May 1987, after the tanks had been removed.

Despite repeated and well-documented communications to counsel for the Estate, no progress was made in the cleanup. EPA also contacted Accra Pac to advise it that the Estate was not fulfilling its obligations and that as a consequence, in addition to pursuing enforcement of the AOC, EPA would look to Accra Pac.

When, by May 17, 1988, no progress in the cleanup was being made by either the Estate of Baker or Accra Pac, a CERCLA § 106 unilateral administrative order (UAO) was issued to Accra Pac, requiring it to complete the work specified in the AOC issued to the Estate, and in addition, to perform a groundwater study. As of the date that this matter was referred to the Department of Justice, Accra Pac had not exhibited any intention of complying with the terms of the order. Its only response had been to submit a FOIA request for documents.

As of the effective date of the UAO, a contractor who identified himself as having been employed by the Estate to conduct an extent of contamination study contacted EPA.

However, because there were continued delays in the commencement of the study, EPA referred this matter to the Department of Justice as a CERCLA § 106 enforcement and § 107 cost recovery action.

The complaint, filed in this case on March 6, 1989, sought the following relief: (1) injunctive relief against the Estate and Accra Pac, Inc., requiring them to comply with the administrative orders issued against them and further injunctive relief requiring them to conduct an extent of contamination study and to clean up the site, (2) stipulated penalties from the Estate for its failure to timely and fully perform the obligations of the 1986 AOC, (3) statutory penalties against defendant Accra Pac, Inc. for its complete failure to comply with the terms of the 1988 UAO, and (4) payment of the United States' past costs.

As part of the settlement of the litigation, the defendants funded an extent of contamination study. That study showed extensive site-related soil and groundwater contamination. Negotiations continued among the parties, and resulted in the proposed consent decree which is the subject of this settlement analysis. Although this consent decree was just recently signed by the defendants, it was based upon a settlement in principle reached several years ago by the litigation team's predecessors on the case, which was honored by the litigation team. This settlement in principle, embodied in the consent decree, committed the defendants to the following: (1) the cleanup of the site, (2) payment of EPA's oversight costs during the cleanup, (3) payment of $ 250,000 of the United States' past response costs, and (4) the Baker Estate's payment of a $ 50,000 stipulated penalty for failure to comply with the AOC.

This case is not related to any of U.S. EPA's enforcement initiatives.

IV. SETTLEMENT CRITERIA:

1. Volume of wastes contributed to site by each PRP:

The Estate of Warner Baker is the current owner of the site, and Accra Pac is the former site owner. There were two known situations which potentially caused the release of hazardous substances at this site. The first was the fire and explosion in 1976, and the other was the leaking of the underground storage tanks. It is not known precisely at what point the tanks began to leak, nor what percentage of the hazardous substances discovered at the site were due to which release. Hence, it is impossible to apportion the volume of wastes between the Estate of Warner Baker and Accra Pac. There are no other PRPs for this site.

2. Nature of the wastes contributed:

The wastes consisted of volatile and semi-volatile organic compounds, and a multi-component petroleum contaminant. These wastes are contained in the site soil and groundwater.

3. Strength of evidence tracing the wastes at the site to the settling parties:

The case against the Estate of Warner Baker is very straight forward. When the underground storage tanks were removed in 1986, there were pinholes in the tanks which were visible to the naked eye. The tanks were tested, and found to contain, among other VOCs, tetrachloroethene, 1,1,1,-TCA, 1,1-DCE, benzene and ethylbenzene, dichlorofluoromethane, trichlorofluoromethane, and trace elements of trichloroethylene (TCE). These compounds were all found in the site soil and groundwater. Dichlorofluoromethane and trichlorofluoromethane, in particular, are "fingerprint" chemicals which related directly to Accra Pac's aerosol packaging operations.

The case against Accra Pac, however, is somewhat more difficult. The evidence as to whether hazardous substances were contained in the above ground storage tanks which were destroyed in 1976 by the fire and explosion is not as strong as we would prefer. In addition, Accra Pac may argue that, to the extent that the tanks contained volatiles, that these compounds were volatilized in the fire and were not released to the soil and groundwater (which caused the United States to incur response costs). The EPA did perform groundwater testing within a few days after the fire, but we tested only for pesticides, which were not found. Volatile and semi-volatile organic compounds, which were later found at such high levels in the groundwater by the U.S. Geological Survey and also during the extent of contamination study, were not tested for in 1976.

As mentioned previously, Accra Pac sold the site to Warner Baker in January 1977. Prior to the sale, Accra Pac allegedly failed to pump out or otherwise contain the thirteen underground storage tanks which it left on-site. The issue as to Accra Pac's liability for the hazardous substances which were leaked from the tanks into the environment turns upon the resolution of two issues, the first primarily one of law, the second of fact. The legal issue is whether Accra Pac's action in leaving hazardous substances in the tanks, without containment systems, caused a "release or substantial threat of a release" as that term is defined in CERCLA § 104. Since the abandonment of drums at a site has been found to constitute a substantial threat of a release, United States v. Mirabile, No. 84-2280 (E.D. Pa. Sept. 4, 1985), and the actual leaking of hazardous substances from tanks, pipelines, drums or other containers has been held to constitute a release, New York v. Shore Realty, 759 F.2d 1032,

1045 (2nd Cir. 1985), leaving hazardous substances in underground storage tanks at a site similarly should subject Accra Pac to liability. A related question is whether the sale of the property to Warner Baker, presumably a responsible buyer, transferred the responsibility for carrying out the environmentally safe disposal of the substances contained in the tanks, so that Accra Pac would not be liable under CERCLA § 107.

If Accra Pac's actions at the time of the property transfer did not constitute an arrangement for disposal, the proof problems against Accra Pac would become more and more difficult to surmount. We would have to prove, in effect, that the leaking of hazardous substances from the tanks occurred prior to the site's transfer to Warner Baker in 1977, even though it was not positively determined that the tanks were leaking until they were removed in 1986. It might be possible to show, using an expert witness or witnesses that the tanks had begun to leak prior to the time of the property transfer. That proof would be based upon the dates in which the tanks were installed, the material from which they were constructed, the hazardous substances which were stored there, and the site soil conditions. Since we could probably establish that at least some of the tanks were installed shortly after the facility's construction in 1968, conceivably these tanks could have been leaking prior to the time of the property transfer in 1977. This proof is considered to be highly speculative.

If Accra Pac were able to prove that the vast majority of the site-related contamination came from the underground storage tanks, and prevailed on the legal issue as to an arrangement for disposal, we would have a great deal of difficulty showing, as required in CERCLA § 107(a)(2), that Accra Pac was the owner of the site at the time in which the disposal (or responsibility for the failure to properly dispose) of the hazardous substances occurred.

4. **Ability of the Settling Parties to Pay:**

Accra Pac is a subsidiary of APG, Inc., a holding company holding 100% of Accra Pac's stock and that of Accra Pac's sister subsidiaries. Accra Pac's activities represent approximately 50% of the commercial activity of the consolidated corporation. Although very little financial information was obtained with regard to Accra Pac during settlement negotiations, the information which was obtained indicated that Accra Pac had incurred a loss in three out of the four years from 1988 to 1991. Little financial information was obtained from Accra Pac due to the consolidated corporation's failure to keep separate books for Accra Pac. APG, Inc. is a closely held corporation, and the principals of APG are also the principals of Accra Pac. It appears from these latter factors and due to the failure to maintain separate corporate books that the APG/Accra Pac

principals are not properly preserving distinct corporate forms. Thus, if it were to become necessary to do so, EPA would probably be able to pierce the corporate veil to reach the assets of APG, Inc.

Significant financial information regarding APG's financial condition was obtained during the negotiations. In contrast to the 1988-1991 period during which Accra Pac reported losses, in the period from 1991 and 1992, APG Group Inc. reported after-tax profits of $ 276,000 and $ 1,922,000, respectively. From the information submitted, Accra Pac is also a growing subsidiary (in contrast to some of its sister subsidiaries), with the consolidated company, especially Accra Pac, also projecting increased business prospects for 1993.

The financial data obtained leads the litigation team to a cautiously optimistic opinion that the Accra Pac and the consolidated corporate group would be able to fulfill the obligations under the consent decree.

The financial information obtained from the Baker Estate indicates that the liquid assets of the Estate (approximately $200,000) will be rather quickly consumed by the payment of the $50,000 stipulated penalty, and the Estate's obligations for the cleanup. (There is a possibility of the sale of some property owned by the estate. However, this possibility is considered to be remote, because this other parcel probably is also contaminated). We anticipate few problems in obtaining the balance of the Estate assets for this purpose. Of course, once the Estate is exhausted, the consent decree obligations will fall upon Accra Pac. However, even given this near certainty, we still think that Accra Pac will be able to fulfill the consent decree obligations.

5. <u>Litigative Risks in Proceeding to Trial</u>:

As mentioned previously, the liability case against the Baker Estate is an open and shut one, since the Estate is the current site owner, and we can show (through residential well sampling data and the extent of contamination study) that there was a release of hazardous substances at the site. The releases to the groundwater also caused EPA to incur response costs.

However, the case against Accra Pac, again as discussed above, primarily turns upon our ability to prove that at least one of two possible events caused the release of hazardous substances (1) that the fire, which occurred when Accra Pac owned the site, caused the release of hazardous substances <u>to the soil or groundwater</u>, and/or (2) that Accra Pac is responsible for the leaks in the underground storage tanks which were documented in 1986.

With regard to the fire, the first concern is proving that the fire did indeed release hazardous substances. Although we suspect that the above-ground storage tanks destroyed in the fire contained chemicals, we do not have good evidence on that point. However, if we could prove that the tanks did contain hazardous substances, Accra Pac would be expected to assert an "act of God" defense. However, Accra Pac would have to demonstrate that the fire was "solely" an act of God. Since there are reports that chemical fumes were noted at the plant shortly before the fire, and because Accra Pac did nothing, once the fire occurred, to mitigate the spread of hazardous substances to the soil and the groundwater, we should be able to show that the negligence of man was also an important factor. That would be sufficient to beat the defense.

Accra Pac, however, might also be able to show that, given conditions which existed at the time of the fire, and the contents of the above ground storage tanks which exploded, the materials in the tanks simply volatilized in the fire. Since the only groundwater samples which were taken in close temporal relation to the fire were tested for pesticides only, whose presence was not found in the samples, we cannot show that the fire was the source of the releases of hazardous substances which caused the United States to incur response costs. Although the fire surely caused a release of hazardous substances to the air, it was the groundwater contamination which caused the Agency to expend funds in the area. Without documentation that hazardous substances were released by the fire and absorbed into the soil and groundwater, the release of hazardous substances into the air would not subject Accra Pac to § 106 or § 107 liability.

We can certainly show that the underground storage tanks were leaking hazardous substances. Whether those leaks are attributable to Accra Pac is discussed in detail in Section IV.3., above, and turn upon (1) the legal issue of whether Accra Pac is responsible for the release since it sold the property, leaving the hazardous substances in the underground storage tanks, and if we do not prevail on the legal issue, (2) whether we could show that the tanks were leaking while Accra Pac was the owner of the property. We think that a court would be very likely to decide that selling a property and leaving hazardous substances in underground tanks, without their proper disposal, is legally indistinguishable from the disposal of drums in deteriorating conditions on a property. See the Mirabile case discussed above. However, if we were to lose as to the legal issue because the court determined that the property was sold for valuable consideration, and that the sale to Warner Baker transferred the responsibility for the tanks to him, our ability to prove that the leaks in the storage tanks occurred while Accra Pac owned the property is considered to be highly speculative.

In addition to the litigative risks in proceeding to trial with regard to the liability case against Accra Pac, the United States would face certain difficulties proving up its cost case as well. When EPA began response actions in the Elkhart, Indiana area, we did not initially segregate costs from the groundwater plume for which Accra Pac and the Baker Estate were responsible from that of other sources to the groundwater. These initial costs were later segregated for enforcement purposes by Ken Theisen, the OSC, based upon his site experience. He divided the plume into geographical sub-areas, and pro-rated the total project costs by area based on the ratio of homes contained in any particular area to the total number of homes placed upon the municipal system. Other cumulative project costs were allocated based upon the same percentage system discussed above.

Although it is the considered judgment of the litigation team that Ken Theisen's allocation scheme was reasonable and rational, the sheer complexity of the cost allocation system might lead the judge to refuse to sustain certain of the costs which we would seek to recover.

VI. PUBLIC INTEREST CONSIDERATIONS:

The public interest would be well served by the proposed consent decree. Since the site was handled through the removal program, that program normally does not finance groundwater cleanups under its auspices. It is unclear whether the site would now score on the NPL, since the primary human health risk in the past, the ingestion of contaminated groundwater, has been eliminated through the hook-up of previously affected residences to the municipal system. If the removal program were to fund-finance this action, the program would only be able to perform soil vapor extraction on site soils, leaving highly contaminated groundwater., This consent decree ensures the cleanup of the site to levels that would be protective of human health and the environment.

The public interest is also well-served by obtaining now an agreement for cleanup. The assets of the Baker Estate will soon be depleted, and Accra Pac, although now financially stable, has been in a shaky financial condition in the past. It is in the public interest to obtain an agreement for cleanup at a time in which Accra Pac is financially viable.

It is also in the public interest for the United States to enter into this settlement agreement due to the extremely limited nature of the covenant not to sue in this case. The covenant not to sue is only for the work to be performed and the payments to be made pursuant to the consent decree. Thus, if the United States decides that additional response actions not covered by the consent decree are necessary at the site (even if they would not be attributable to "unknown conditions," as required in the

RD/RA context), the United States has fully preserved its right to issue an a new § 106 order, or to fund-finance activities, and then bring a later cost recovery action.

It is the desire to emphasize site cleanup that also partially explains the relatively low percentage of the United States' past response costs which are being recovered by this settlement (50.2 %), although our percentage recovery of total past and future costs (through reimbursement and work to be performed by the defendants) will be considerably higher. Although the defendants are considered to be fully capable of carrying out their obligations under the decree, we are concerned that they might not be able to both pay a much higher percentage of the United States' past costs and finance site cleanup. In addition, this consent decree is the written embodiment of a settlement in principle which was reached several years' ago, but which took a long time to finalize. The percentage recovery at the time that the settlement in principle was reached was much higher than the current percentage. Since the litigation team's predecessors had reached this settlement in principle, the litigation team felt obliged to honor it, even though the United States' costs (primarily due to the accrual of interest) continued to increase.

VII. PRECEDENTIAL VALUE:

The major precedential value presented by this settlement is the defendants' ability to challenge, through the dispute resolution procedure, EPA's decision as to the appropriate site technology, and the appropriate action-specific ARARs, particularly the need for, and the standards relating to, air emissions and air emissions control technology. The decision can be made by the district court based on an arbitrary and capricious standard, with the evidence limited to the administrative record.

Many PRP groups may find these provisions of the decree particularly attractive. However, the situation presented here is distinguishable from a normal RD/RA consent decree, in which the Agency will have already undergone the technical, ARARs and cost analysis, and embodied the Agency's decision in a Record of Decision. Here, the site has never been listed on the NPL, and EPA will undertake the technology analysis after the defendants perform the Engineering Design Study. Although a similar situation is unlikely to be presented, if PRPs push to have a comparable ability to challenge EPA's technology and ARARs decisions, we could point them to the very limited covenant not to sue discussed above, which is part and parcel of the agreement. Very few PRPs would consider this ability to challenge EPA sufficiently attractive that they would also accede to such a limited covenant not to sue.

VIII. VALUE OF OBTAINING A PRESENT SUM CERTAIN:

The value of obtaining a present sum certain relates to the litigation risks associated with establishing Accra Pac's liability and the weaknesses present in our cost case, which are fully discussed in Section IV.5., above.

IX. INEQUITIES AND AGGRAVATING FACTORS:

None.

X. NATURE OF THE CASE THAT REMAINS AFTER SETTLEMENT:

This is considered to be a global settlement with the defendants in this matter, unless EPA decides that additional response actions are necessary at the site. In that instance, EPA's entire arsenal of enforcement mechanisms has been fully preserved due to the very limited nature of the covenant not to sue.

RECOMMENDATION

I recommend that the attached consent decree be accepted by Region V as proposed and forwarded to the Department of Justice for final concurrence. After DOJ concurrence has been obtained, the consent decree will be lodged with the court for the public comment period mandated by CERCLA, after which the United States may move for the entry of the consent decree as lodged, or may seek to modify or withdraw the government's consent to the decree, if public comment so warrants.

ITEMIZED COST SUMMAR
ACCRA-PAK, IN
SUPERFUND SITE # 4H
PREPARED 04/29/93

EPA EXPENDITURES		Cumulative Costs Through March 31, 1993
EPA PAYROLL --		
--Headquarters	$	574.62
--Regional		55,985.98
INDIRECT COST --		
--		51,660.10
EPA TRAVEL --		
--Headquarters		514.63
--Regional		1,101.29
INTERAGENCY AGREEMENTS --		
--Agency for Toxic Substances & Disease Registry (ATSDR)		2,836.93
--Department of Interior (DW14038401)		7,635.94
MISCELLANEOUS EXPENDITURES --		
--Dun & Bradstreet (0U9800NBLX)		41.02
--Dun & Bradstreet (6U1793NBLX)		46.36
TAT CONTRACT --		
--Roy F. Weston (68-01-6669)		10,548.61
--Roy F. Weston (68-01-7367)		28,156.15
TOTAL EPA COSTS BEFORE INTEREST	$	159,101.63
Pre-Judgement Interest		43,343.66
TOTAL EPA COSTS FOR ACCRA-PAK	$	202,445.29
TOTAL COSTS RECOVERED TO DATE		0.00
TOTAL MAIN ST. COSTS ATTRIBUTED TO ACCRA-PAK THRU 9/30/90 (See Attached)		295,591.98
TOTAL EPA UNRECOVERED COSTS FOR ACCRA-PAK, IN	$	498,037.27

Please Note: National Contract Laboratory program costs may be significantly understated. These costs do not include any lab costs that may have been billed to EPA prior to FY 1986, if such costs were incurred, and no estimate of the CLP Sample Management Cost (ranges from 6.1 % to 17.0 % of Analytical costs) is provided. A complete accounting of Contract Laboratory Costs normally is provided by VIAR within the documentation process.

This summary does not include Department of Justice costs. Those costs will be documented separately by the Department of Justice.

CUMULATIVE COST SUMMARY
MAIN STREET/ACCRA PA NDIANA
SUPERFUND SITE # 4H
PREPARED 07/31/92

		Documented Costs through JUNE 30, 1990
EPA EXPENDITURES		
Headquarters	$	
Regional (ratio .2195)		7,381.69
EPA INDIRECT COSTS —		
—(ratio .2195)		20,137.37
EPA TRAVEL —		
Headquarters		
Regional (ratio .2195)		884.76
ERC CONTRACT—		
-- PEDCO ENVIRONMENTAL,INC.(68-01-6894)(actual)		168,045.35
TAT CONTRACT —		
—ROY F. WESTON (68-01-6669) (ratio .2059)		22,856.25
--ROY F. WESTON (68-01-7367) (ratio .2059)		1,514.36
TOTAL EPA COSTS BEFORE INTEREST	$	220,819.78
INTEREST COST FOR MAIN STREET/ACCRA PAK (.2050) FROM DEMAND LETTER DATE OF 08/19/88 THROUGH 07/31/92.	$	74,772.20
TOTAL AMOUNT RECOVERED TO-DATE		0.00
TOTAL EPA COSTS FOR MAIN STREET, IN	$	295,591.98

This allocation is based on the cost breakdown for the removal action at the Elkart Main Street Well Field, Elkart, Indiana (Site D3) prepared by Kenneth M. Theisen On Scene Coordinator on March 10, 1988. (attached)

The Cost Summary for the Removal Action th the Main Street Accounting Section on September 20, 1990 differs slightyly from the total costs listed in the Theisen memo. These differences are primarily accounted for by: (1) the finalization of an indirect cost rate which is lower than the provisional rate used by Theisen. (2) the fact that program management fees under the TAT contracts were not included in the cost summary because documentation of these costs is not available at this time.

For these reasons, the costs allocated to the Accra-Pak site from the Removal Documentation are based on Theisen's ratio of part to whole for payroll, travel and indirect costs. (.2195) and for the TAT contracts (.2059). ERCS costs are the same in both documents.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ACCRA PAC, INC., and Kenneth R. Everett and Diana Lee Power, in their capacities as Personal Co-representatives of the ESTATE OF WARNER BAKER, Defendants.	CIVIL No. H89 - 0113 Judge Robert L. Miller, Jr.

CONSENT DECREE

WHEREAS, the United States of America, on behalf of the Administrator of the United States Environmental Protection Agency ("Plaintiff" or "United States") filed a Complaint on March 6, 1989 against Accra Pac, Inc. and Kenneth R. Everett and Diana Lee Power, in their capacities as personal co-representatives of the estate of Warner Baker ("Defendants"), pursuant to Sections 106 (a) and 107 (a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9606 (a) and 9607 (a), as amended by the Superfund Amendments and Reauthorization act of 1986, Pub. L. 99-499 ("SARA"), seeking: 1) recovery of costs, including enforcement costs, incurred by Plaintiff in responding to the release or threat of release of hazardous substances at, or in connection with, the Accra Pac site in Elkhart, Indiana ("Site" or "Facility"), plus pre-judgment interest thereon; 2) injunctive

relief for cleanup of the Site; 3) a declaratory judgment against the Defendants, jointly and severally, for all future response costs to be incurred by the United States in connection with the Site; 4) judgment against Defendant, Baker Estate, for all stipulated penalties accrued as a result of its failure to perform timely and fully the actions required of it by a 1986 Administrative Consent Order ("Consent Order") with Plaintiff; 5) judgment against Defendant, Accra Pac, Inc., for statutory penalties and punitive damages pursuant to Sections 106(b)(1) and 107(c)(3) of CERCLA; 6) an order that Defendant Baker Estate fully and timely perform the actions required by the Consent Order; 7) an order that Defendant Accra Pac fully and timely perform the actions required by an Administrative Order issued by Plaintiff pursuant to Section 106 of CERCLA ("1988 Order"); and 8) Plaintiff's costs and attorneys' fees;

WHEREAS, the United States has incurred and continues to incur response costs in responding to the release or threat of release of hazardous substances at or in connection with the Site; and

WHEREAS, Plaintiff and Defendants, having resolved that the settlement of this matter is in the public interest, have agreed to the entry of this Consent Decree;

NOW THEREFORE, without adjudication of any remaining issues of law or fact, and without admission of liability or wrongdoing on the part of the Defendants, and upon consent of the

parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. The parties shall not challenge the terms of this Consent Decree, except as provided by this Consent Decree, or this Court's jurisdiction to enter and enforce this Consent Decree.

II. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Defendants and their successors and assigns. Any change in ownership or corporate status of a Defendant including, but not limited to, any transfer of assets or real or personal property shall in no way alter such Defendant's responsibilities under this Consent Decree.

3. Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree.

Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

III. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"ARARs" ("applicable or relevant and appropriate requirements") shall be defined as set forth in Section 121(d) of CERCLA and any applicable regulations.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Cleanup" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Defendants to implement

the final plans and specifications submitted by the Defendants pursuant to the Work Plan and approved by EPA.

"Cleanup Design" shall mean those activities to be undertaken by the Defendants to develop the final plans and specifications for the Cleanup pursuant to the Work Plan.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXVII). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"Engineering Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Cleanup pursuant to the Engineering Design Study Plan.

"Defendants" shall mean Accra Pac, Inc. and Kenneth R. Everett and Diana Lee Power, in their capacities as personal co-representatives of the Estate of Warner Baker.

"Engineering Design Study Plan" shall mean the document submitted by the Defendants pursuant to Paragraph 11.a of this Consent Decree and described more fully in Paragraph 11.b.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Future Response Costs" shall include all costs, other than "oversight costs," including direct and indirect costs, paid by the United States in connection with the Site between the date of lodging of this Consent Decree and the effective date of this Consent Decree and all interest on the Past Response Costs from the date of lodging of this Consent Decree to the date of payment of the Past Response Costs.

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, including, but not limited to, any amendments thereto.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Cleanup as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

"Oversight Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs,

travel costs, laboratory costs, the costs incurred pursuant to Sections VII (Access), (including, but not limited to, attorneys fees and the amount of just compensation), XII (Emergency Response), and Paragraph 70 of Section XIX.

"Owner Defendants" shall mean Kenneth R. Everett and Diane Lee Power, in their capacities as personal co-representatives of the Estate of Warner Baker.

"Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs and interest, that the United States incurred and paid with regard to the Site prior to the date of lodging of this Consent Decree.

"Performance Standards" shall mean those cleanup standards, standards of control, and other substantive requirements, criteria or limitations set forth in Section II.A.11.-14. of the SOW.

"Plaintiff" shall mean the United States.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Accra Pac facility" shall mean the property located at and adjacent to 2626 Industrial Parkway in Elkhart, Indiana, as described in Appendix B attached hereto.

"Site" shall mean 1) the Accra Pac facility and 2) contiguous property where hazardous substances have come to be located as the result of hazardous substance disposal at the Accra Pac facility.

"Scope of Work" or "SOW" shall mean the statement of work for implementation of the Cleanup Action at the Site, as set forth in Appendix A to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Defendants to supervise and direct the implementation of the Work under this Consent Decree.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), and (4) any "hazardous waste" under 329 IAC 1 et seq.

"Work" shall mean all activities Defendants are required to perform under this Consent Decree, except those required by Section XXIII (Retention of Records).

"Work Plan" shall mean the document submitted by the Defendants pursuant to Paragraph 12.a of this Consent Decree and described more fully in Paragraph 12.b.

IV. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment by the design and implementation of response actions by the Defendants and to reimburse response costs of the Plaintiff.

6. Commitments by Defendants

a. Defendants shall finance and perform the Work in accordance with this Consent Decree and all plans, standards, specifications, and schedules set forth in or developed and approved by EPA pursuant to this Consent Decree. Defendants shall also reimburse the United States for Past Response Costs and Oversight Costs not inconsistent with the NCP, as provided in this Consent Decree.

b. The obligations of Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several, except that defendant Accra Pac shall not be jointly and severally liable for the penalty payable by the defendant Estate of Warner Baker pursuant to paragraph 43. In the event of the insolvency or other failure of any one or more Defendants to implement the requirements of this Consent Decree, the remaining Defendants shall complete all such requirements.

7. Compliance With Applicable Law

All activities undertaken by Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and §300.5 of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Defendants may seek relief under the provisions of Section XVI (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice of Obligations to Successors-in-Title

a. Within 15 days after the entry of this Consent Decree, Kenneth R. Everett and Diana Lee Power, in their capacities as personal co-representatives of the Estate of Warner Baker, shall record a certified copy of this Consent Decree with the Recorder's Office [or Registry of Deeds or other appropriate office], Elkhart County, State of Indiana for the property which is the subject of this Consent Decree. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and any lien retained by the United States and shall reference the recorded location of the Consent Decree and any restrictions applicable to the property under this Consent Decree.

b. The obligations of the Estate of Warner Baker with respect to the provision of access under Section VII (Access) and the implementation of institutional controls contained in Appendix C shall be binding upon any and all such Defendants and any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Estate of Warner Baker shall record at the Recorder's Office a notice of obligation to provide access under Section VII (Access) and related covenants. Each subsequent instrument conveying an interest to any such property included in the Site shall

reference the recorded location of such notice and covenants applicable to the property.

c. The Estate of Warner Baker and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Defendants' obligations under this Consent Decree, including their obligations to provide or secure access pursuant to Section VII, shall continue to be met by the Defendants. In addition, if the United States approves, the grantee may perform some or all of the Work under this Consent Decree. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of the Defendants to comply with the Consent Decree.

V. PERFORMANCE OF THE WORK BY DEFENDANTS

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Defendants pursuant to Sections V (Performance of the Work by Defendants), and VI (Quality Assurance, Sampling and Data Analysis) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, EIS Environmental Engineers, Inc., which EPA has authorized to proceed. If at any time Defendants propose to change the Supervising Contractor, Defendants shall

give notice to EPA and must obtain an authorization to proceed from EPA, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Defendants in writing. Defendants shall submit to EPA a list of contractors, including the qualifications of each contractor, that would be acceptable to them within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Defendants may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, such failure may constitute force majeure under the provisions of Section XVI (Force Majeure) hereof, and Defendants may seek relief under such provisions.

11. Engineering Design Study

a. Within 60 days after the lodging of this Consent Decree, Defendants shall submit to EPA and the State a work plan for the design of the Cleanup at the Site ("Engineering Design Study Plan"). The Engineering Design Study Plan shall provide for

design of the Cleanup in accordance with the SOW and, upon its approval by EPA, shall be incorporated into and become enforceable under this Consent Decree. Within 60 days after the lodging of this Consent Decree, the Defendants shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Engineering Design Study Plan shall include plans and schedules for implementation of all Cleanup Design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but not limited to, a Quality Assurance Project Plan (QAPP) in accordance with Section VI (Quality Assurance, Sampling and Data Analysis)); (2) a treatability study, which will include a study of alternatives for the soil remediation system, groundwater treatment system and air emission remediation system, including whether an air emission remediation system is required by federal or state ARARs; (3) a Pre-design Work Plan; (4) a preliminary design submittal; (5) a final design submittal; and (6) a Construction Quality Assurance Plan. In addition, the Engineering Design Study Plan shall include a schedule for completion of the Work.

c. Upon approval of the Engineering Design Study Plan by EPA, after a reasonable opportunity for review and comment by the

State and after the public participation set forth in Section II.B.1.b. of the SOW, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Defendants shall implement the Engineering Design Study Plan. The Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Engineering Design Study Plan in accordance with the approved schedule for review and approval pursuant to Section IX (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Defendants shall not commence further Engineering Design activities at the Site prior to approval of the Engineering Design Study Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of treatability studies; (3) results of additional field sampling and pre-design work; (4) project delivery strategy; (5) preliminary plans, drawings and sketches; (6) required specifications in outline form; and (7) preliminary construction schedule.

e. The final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to quality assurance during construction activities at the site, shall specify a quality assurance official ("QA Official"),

independent of the Construction Contractor, to conduct a quality assurance program during the construction phase of the project.

12. Work Plan

a. Within 60 days after the approval of the final design submittal, but in no event prior to entry of this Consent Decree, Defendants shall submit to EPA and the State, a work plan for the performance of the Cleanup at the Site ("Work Plan"). The Work Plan shall provide for construction of the Cleanup, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by EPA, the Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Work Plan, Defendants shall submit to EPA and the State a Health and Safety Plan for field activities required by the Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Work Plan shall include the following: (1) the schedule for completion of the Cleanup; (2) method for selection of the contractor; (3) methodology for implementation of the Construction Quality Assurance Project Plan; (4) a groundwater monitoring plan; (5) methods for satisfying permitting requirements; (6) methodology for implementation of the Operation and Maintenance Plan; (7) tentative formulation of the Cleanup team; and (8) procedures and plans for the decontamination of equipment and the disposal of contaminated materials. The Work

Plan also shall include a schedule for implementation of all Cleanup tasks identified in the final design submittal and shall identify the initial formulation of the Defendants' Cleanup Project Team (including, but not limited to, the Supervising Contractor).

c. Upon approval of the Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Defendants shall implement the activities required under the Work Plan. The Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Work Plan in accordance with the approved schedule for review and approval pursuant to Section IX (Submissions Requiring Agency Approval). Unless otherwise directed by EPA, Defendants shall not commence physical on-site activities at the Site prior to approval of the Work Plan.

13. The Work performed by the Defendants pursuant to this Consent Decree shall include the obligation to achieve the Performance Standards.

14. Defendants acknowledge and agree that nothing in this Consent Decree, the SOW, the Engineering Design Study Plan or the Work Plan constitutes a warranty or representation of any kind by Plaintiff that compliance with the Work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards. Defendants' compliance with the Work requirements shall not foreclose Plaintiff from seeking compliance with all

terms and conditions of this Consent Decree, including, but not limited to, the applicable Performance Standards.

15. Defendants shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Defendants shall include in the written notification the following information, where available: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Defendants shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Defendants following the award of the contract for Cleanup construction. The Defendants shall provide the information required by Paragraph 15 as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VI. QUALITY ASSURANCE, SAMPLING, and DATA ANALYSIS

16. Defendants shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with EPA's "Interim Guidelines and Specifications For Preparing Quality Assurance Project Plans," December 1980, (QAMS-005/80); "Data Quality Objective Guidance," (EPA/540/G87/003 and 004); "EPA NEIC Policies and Procedures Manual," May 1978, revised November 1984, (EPA 330/9-78-001-R); and subsequent amendments to such guidelines upon notification by EPA to Defendants of such amendments. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") to EPA and the State that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Defendants in implementing this Consent Decree. In addition, Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality

assurance monitoring. Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" and the "Contract Lab Program Statement of Work for Organic Analysis," dated February 1988, and any amendments made thereto during the course of the implementation of this Decree. Defendants shall ensure that all laboratories they use for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program.

17. Upon request, the Defendants shall allow split or duplicate samples to be taken by EPA or its authorized representatives. Defendants shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples necessary to perform its oversight functions and/or statutory duties under CERCLA. Upon request, EPA shall allow the Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Defendants' implementation of the Work.

18. Defendants shall submit to EPA three copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Defendants with respect to the Site

and/or the implementation of this Consent Decree unless EPA agrees otherwise.

19. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

VII. ACCESS

20. Commencing upon the date of lodging of this Consent Decree, the Defendants agree to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and any other property to which access is required for the implementation of this Consent Decree, to the extent access to the property is controlled by Defendants, for the purposes of conducting any activity related to this Consent Decree including, but not limited to:

a. Monitoring the Work;

b. Verifying any data or information submitted to the United States;

c. Conducting investigations relating to contamination at or near the Site;

d. Obtaining samples;

e. Assessing the need for, planning, or implementing additional response actions at or near the Site;

f. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Defendants or their agents, consistent with Section XXIII; and

g. Assessing Defendants' compliance with this Consent Decree.

21. To the extent that the Site or any other property to which access is required for the implementation of this Consent Decree is owned or controlled by persons other than Defendants, Defendants shall use best efforts to secure from such persons access for Defendants, as well as for the United States and the State and their representatives, including, but not limited to, their contractors, as necessary to effectuate this Consent Decree. For purposes of this Paragraph "best efforts" includes the payment of reasonable sums of money in consideration of access. If any access required to complete the Work is not obtained within 45 days of the date of lodging of this Consent Decree, or within 45 days of the date EPA notifies the Defendants in writing that additional access beyond that previously secured is necessary, Defendants shall promptly notify the United States, and shall include in that notification a summary of the steps Defendants have taken to attempt to obtain access. The United States may, as it deems appropriate, assist Defendants in obtaining access. Defendants shall reimburse the United States in accordance with the procedures in Section XIII (Reimbursement of Response Costs), for all costs incurred by the United States

in obtaining access, including, but not limited to, attorneys fees.

21. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

VIII. REPORTING REQUIREMENTS

22. In addition to any other requirement of this Consent Decree, Defendants shall submit to EPA and the State three copies each of written quarterly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous quarter; (b) include a summary of all results of sampling and tests and all other data received or generated by Defendants or their contractors or agents in the previous quarter; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous quarter; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next quarter and provide other information relating to the progress of construction, (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that

Defendants have proposed to EPA or that have been approved by EPA; and Defendants shall submit these progress reports to EPA and the State by the tenth day of every quarter following the lodging of this Consent Decree until EPA notifies the Defendants pursuant to Paragraph 36 of Section XI (Certification of Completion). If requested by EPA, Defendants shall also provide briefings for EPA to discuss the progress of the Work.

23. The Defendants shall notify EPA of any change in the schedule described in the quarterly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

24. Upon the occurrence of any event during performance of the Work that Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), Defendants shall within 24 hours of the on-set of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Emergency Response Section, Region V, United States Environmental Protection Agency. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

25. Within 20 days of the onset of such an event, Defendants shall furnish to Plaintiffs a written report, signed by the Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Defendants shall submit a report setting forth all actions taken in response thereto.

26. Defendants shall submit three copies of all plans, reports, and data required by the SOW, the Engineering Design Study Plan, the Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in such plans. Defendants shall simultaneously submit three copies of all such plans, reports and data to the State.

27. All reports and other documents submitted by Defendants to EPA (other than the quarterly progress reports referred to above) which purport to document Defendants' compliance with the terms of this Consent Decree shall be signed by an authorized representative of the Defendants.

IX. SUBMISSIONS REQUIRING AGENCY APPROVAL

28. After review of any plan, report or other item (including the Treatability Study required by ¶ II.B.1.b. of the Scope of Work (SOW)) which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission

to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Defendants modify the submission; or (e) any combination of the above.

29. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 28(a), (b), or (c), Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to Paragraph II.B.1.b. of the SOW and to their right to invoke the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 28.c. and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XVIII.

30. a. Upon receipt of a notice of disapproval pursuant to Paragraph 28.d., Defendants shall, within 14 days or such greater time as specified by EPA in such notice, except if EPA concludes an emergency requires a lesser time, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XVIII, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraph 29.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 28.d., Defendants shall proceed, at the

direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Defendants of any liability for stipulated penalties under Section XVIII (Stipulated Penalties).

31. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to amend or develop the plan, report or other item. Defendants shall implement any such plan, report, or item as amended or developed by EPA, subject only to their right to invoke the procedures set forth in Section XVII (Dispute Resolution).

32. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Defendants invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XVII (Dispute Resolution) and Section XVIII (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVIII.

33. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

X. PROJECT COORDINATORS

34. Defendants have designated H. Stephen Nye of EIS Environmental Engineers, Inc., who has been pre-approved by EPA, as their Project Coordinator, and Plaintiff has designated Kenneth Theisen, of the Emergency and Enforcement Response Branch, as its Project Coordinator. Within 20 days of lodging this Consent Decree, Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Defendants' Alternate Project Coordinator or any change in Defendants' Project Coordinator shall be subject to disapproval by EPA. The Project Coordinator and the Alternate Project Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Defendants' Project Coordinator shall not be an

attorney for any of the Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

35. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XI. CERTIFICATION OF COMPLETION

36. Completion of the Cleanup

a. Within 90 days after Defendants conclude that the Cleanup has been fully performed and the Performance Standards have been attained, Defendants shall schedule and conduct a pre-certification inspection to be attended by Defendants and EPA. If, after the pre-certification inspection, the Defendants

still believe that the Cleanup has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section IX (Submissions Requiring Agency Approval) within 60 days of the inspection. In the report, a registered professional engineer and the Defendants' Project Coordinator shall state that the Cleanup has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Defendant or the Defendants' Project Coordinator:

> "To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Cleanup or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Defendants in writing of the activities that must be undertaken to complete the Cleanup and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities

consistent with the Consent Decree and the SOW or require the Defendants to submit a schedule to EPA for approval pursuant to Section IX (Submissions Requiring Agency Approval). Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Cleanup has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Defendants. This certification shall constitute the Certification of Completion of the Cleanup for purposes of this Consent Decree, including, but not limited to, Section XIX (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Cleanup shall not affect Defendants' obligations still remaining under this Consent Decree.

XII. EMERGENCY RESPONSE

37. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Defendants shall, subject to

Paragraph 38, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Defendants shall notify the EPA Waste Management Division, Emergency Response and Enforcement Branch, Region V. Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIII (Reimbursement of Response Costs).

38. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XIII. REIMBURSEMENT OF RESPONSE COSTS

39. Defendants shall pay to the United States eight payments of $31,250, for a total of $250,000, which shall include interest at the current CERCLA rate of 3.49%, beginning 30 days after the effective date of this Consent Decree and continuing every 3 months thereafter for 7 additional payments, in reimbursement of Past Response Costs, by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Number 054H, U.S.A.O. file number 8801275, and DOJ Case Number 90-11-3-412. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendants upon execution of the Consent Decree. Payments by EFT must be received at the U.S. D.O.J. lockbox bank by 11:00 A.M. (Eastern Time) to be credited on that day. Defendants may, after making the first payment and submitting the treatability study pursuant to paragraph 11.b. above, petition that based on the past and projected costs of the Work and Defendants' current and projected financial condition, that EPA in its unreviewable discretion, in writing, extend, defer or waive the payment of response costs. Defendants will provide EPA all information reasonably needed to review such petition.

40. Defendants shall reimburse the United States for all Oversight Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States will send Defendants a bill requiring payment that includes an Itemized

Cost Summary on a periodic basis. Defendants shall make all payments within 60 days of Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 41. The Defendants shall make all payments required by this Paragraph by a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing CERCLA Number 054H and DOJ Case Number 90-11-3-412. The Defendants shall forward the certified check(s) to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Ill. 60673, and shall send copies of the check to the United States as specified in Section XXIV (Notices and Submissions) and Chief, Solid Waste and Emergency Response Branch, CS-3T, Office of Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604-3590.

41. Defendants may contest payment of any Oversight Costs under Paragraph 40 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 60 days of receipt of the bill and must be sent to the United States pursuant to Section XXIV (Notices and Submissions). Any such objection shall specifically identify the contested Oversight Costs and the basis for objection. In the event of an objection, the Defendants shall within the 60 day period pay all uncontested Oversight Costs to the United States in the manner described in Paragraph 40. Simultaneously, the Defendants shall establish an interest

bearing escrow account in a federally-insured bank duly chartered in the State of Indiana and remit to that escrow account funds equivalent to the amount of the contested Oversight Costs. The Defendants shall send to the United States, as provided in Section XXIV (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Oversight Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Defendants shall initiate the Dispute Resolution procedures in Section XVII (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 40. If the Defendants prevail concerning any aspect of the contested costs, the Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 40; Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVII (Dispute Resolution) shall be the exclusive mechanisms for

resolving disputes regarding the Defendants' obligation to reimburse the United States for its Oversight Costs.

42. In the event that the payments required by Paragraph 39 are not made when due, or the payments required by Paragraph 40 are not made within 60 days of the Defendants' receipt of the bill, Defendants shall pay interest on the unpaid installment or balance at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607. The interest to be paid on the initial payment of Past Response Costs shall begin to accrue 30 days after the effective date of the Consent Decree. Interest on subsequent installment payments of Past Response Costs shall begin to accrue on the dates such installment payments are due. The interest on Oversight Costs shall begin to accrue on the date of the Defendants' receipt of the bill. Interest shall accrue at the rate specified through the date of the Defendant's payment. Payments of interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiffs by virtue of Defendants' failure to make timely payments under this Section.

XIV. PENALTY PAYMENT

43. The Defendant Estate of Warner Baker shall pay the sum of $50,000 to the United States within thirty (30) calendar days of the entry of this Decree, by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Number 054H, U.S.A.O. file number 8801275, and DOJ Case Number 90-11-3-412. Payment shall be made in accordance

with instructions provided by the Plaintiff to the Settling Defendants upon execution of the Consent Decree. Payments by EFT must be received at the U.S. D.O.J. lockbox bank by 11:00 A.M. (Eastern Time) to be credited on that day. This payment shall be in settlement of all stipulated penalties which the United States contends are owed by the Estate of Warner Baker under the Consent Order.

XV. INDEMNIFICATION AND INSURANCE

44. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Defendants shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, acts or omissions of Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Defendants, their officers, directors,

employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Defendants in carrying out activities pursuant to this Consent Decree. Neither the Defendants nor any such contractor shall be considered an agent of the United States.

45. Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between any one or more of Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

46. No later than 15 days before commencing any on-site Work, Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Cleanup pursuant to Paragraph 36(b) of Section XI (Certification of Completion) comprehensive general liability insurance and automobile insurance with limits of one million dollars combined

single limit, along with umbrella liability coverage of ten million dollars, naming as additional insured the United States. In addition, for the duration of this Consent Decree for as long as any persons are performing Work in furtherance of this Consent Decree, Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Defendants shall provide to EPA certificates of such insurance and a copy of each insurance policy. For as long as Defendants are required to maintain insurance, Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree. If Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor.

XVI. FORCE MAJEURE

47. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Defendants or of any entity controlled by Defendants,

including, but not limited to, their contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants' best efforts to fulfill the obligation. The requirement that the Defendants exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards. However, the personal co-representatives of the Estate of Warner Baker shall not be personally liable for stipulated penalties under this Consent Decree for financial inability of the Estate to complete the Work, or for delays by the probate court in approving expenditures after prompt action by the Estate to seek such court approval.

48. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the Hazardous Waste Management Division, EPA Region V, within 96 hours of when Defendants first knew or should have

known that the event might cause a delay. Within 5 days thereafter, Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendants from asserting any claim of force majeure for that event. Defendants shall be deemed to have notice of any circumstance of which their contractors or subcontractors had or should have had notice.

49. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that

the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

50. If the Defendants elect to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution), they shall do so no later than 15 days after receipt of EPA's notice. In any such proceeding, Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Defendants complied with the requirements of Paragraphs 47 and 48, above. If Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XVII. DISPUTE RESOLUTION

51. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Disputes regarding EPA's decision on ARARs for air stripper air emissions and whether an

air emission remediation system is required are also subject to Paragraph II.B.1.B. of the SOW. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Defendants that have not been disputed in accordance with this Section.

52. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

53. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 days after the conclusion of the informal negotiation period, Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Defendants. The Statement of Position shall specify the Defendants' position as to whether formal dispute resolution should proceed under paragraph 54 or 55.

b. Within fourteen (14) days after receipt of Defendants' Statement of Position, EPA will serve on Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 54 or 55.

c. If there is disagreement between EPA and the Defendants as to whether dispute resolution should proceed under Paragraph 54 or 55, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Defendants ultimately appeal to the court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 54 and 55.

54. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Paragraph. The defendants may submit a supplemental statement of position within ten days after receiving EPA's Statement of Position, and EPA may submit a supplemental statement of position within ten days after receiving defendants' supplemental statement.

b. The Director of the Waste Management Division, EPA Region V, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 54a. This decision shall be binding upon the Defendants, subject only to the right to seek judicial review pursuant to Paragraph 54c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 54b shall be reviewable by this Court, provided that a notice of judicial appeal is filed by the Defendants with the Court and served on all parties within 10 days of receipt of EPA's decision. The notice of judicial appeal shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Defendants' notice of judicial appeal.

d. In proceedings on any dispute governed by this Paragraph, Defendants shall have the burden of demonstrating that

the decision of the Waste Management Division Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 54a.

55. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Defendants' Statement of Position submitted pursuant to Paragraph 53a., the Director of the Waste Management Division, EPA Region V, will issue a final decision resolving the dispute. The Waste Management Division Director's decision shall be binding on the Defendants unless, within 10 days of receipt of the decision, the Defendants file with the Court and serve on the parties a notice of judicial appeal setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Defendants' notice of judicial appeal.

b. Judicial review of any dispute governed by this Paragraph shall be governed by applicable provisions of law.

56. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any

way any obligation of the Defendants under this Consent Decree not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 66.

57. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII (Stipulated Penalties).

XVIII. STIPULATED PENALTIES

58. Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 59 and 60 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Paragraph II.b.1.b. of the SOW or Section XVI (Force Majeure). However, if defendants cure within 14 days any non-compliance other than failure to take action to abate an endangerment under Section XII or a submission under Section IX, their liability for stipulated penalties for such non-compliance will be canceled. "Compliance" by Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this

Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

59. a. The following stipulated penalties shall be payable per violation per day to the United States for any noncompliance identified in Subparagraph b:

b. PENALTY PER VIOLATION PER DAY

Period Of Noncompliance

	UP TO 30 DAYS	UP TO 60 DAYS	OVER 60 DAYS
Failure to complete any of the following site security measures:	$1,250	$2,500	$5,000
Failure to complete a security fence within 30 days after U.S. EPA's approval of the engineering design study plan.			
Failure to maintain the fence after completion and to institute and maintain any other site security measures deemed necessary by U.S. EPA.			
Failure to complete any of the following components of Work:	$2,000	$5,500	$9,000
Failure, during the engineering design study, to establish a baseline groundwater contamination concentration.			
Failure to begin construction of the selected groundwater treatment technology within 90 days of U.S. EPA's approval of the Work Plan.			

Failure to properly install the selected groundwater cleanup technology within the deadline approved by U.S. EPA.			
Failure to implement quarterly groundwater monitoring in accordance with the schedule approved by U.S. EPA.			
Discontinuation of the groundwater treatment technology without prior U.S. EPA approval, or as permitted pursuant to Section XVII (Dispute Resolution).			
Failure to implement a soil treatability study within 30 days of U.S. EPA's approval of the engineering design study.			
Failure to properly install the soil cleanup technology in accordance with the schedule approved by U.S. EPA.			
Discontinuation of the soil treatment technology without prior U.S. EPA approval, or as permitted pursuant to Section XVII (Dispute Resolution).			
Failure to take action to abate an endangerment under Section XII:	$4,000	$7,500	$12,500

60. The following stipulated penalties shall be payable per violation per day to the United States for failure to submit timely or adequate reports or other written documents pursuant to Paragraphs 9, 11, 12, 22-27, and 37:

PENALTY PER VIOLATION PER DAY

Period of Noncompliance

	UP TO 30 DAYS	UP TO 60 DAYS	OVER 60 DAYS
Each failure to submit a progress report	$ 500	$ 1,250	$ 2,500
Each failure to submit any of the following studies and plans:	$ 2,500	$ 5,000	$ 10,000
Treatability Study, Design Studies, Work Plan, Health and Safety Plan, Quality Assurance Project Plan (Sampling), Quality Assurance Project Plan (Construction)			
Each failure to comply with notice or other requirements of the following provisions:	$ 2,500	$ 5,000	$ 10,000
Notice of Filing of Deed Restriction & Notice of a Release as required in Para. 37.			

61. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 71 of Section XIX (Covenants Not to Sue by Plaintiff), Defendants shall be liable for

a stipulated penalty in the amount of $300,000 if EPA assumes performance of 50% (by cost) or more of the Work, and a prorated penalty if EPA assumes performance of less than 50% (by cost) of the Work.

62. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

63. Following EPA's determination that Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Defendants written notification of the same and describe the noncompliance. EPA may send the Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Defendants of a violation.

64. All penalties owed to the United States under this section shall be due and payable within 30 days of the Defendants' receipt from EPA of a demand for payment of the penalties, unless Defendants invoke the Dispute Resolution procedures under Section XVII (Dispute Resolution). All payments under this Section shall be paid by certified check made payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. EPA, Superfund Accounting P.O. Box 70753, Chicago, Illinois 60673, and shall reference CERCLA Number 054H and DOJ Case Number 90-11-3-412.

Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXIV (Notices and Submissions).

65. The payment of penalties shall not alter in any way Defendants' obligation to complete the performance of the Work required under this Consent Decree.

66. Penalties shall continue to accrue as provided in Paragraph 62 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Defendants to the

extent that they prevail. However, the payment of stipulated penalties in the event of an appeal of the district court's decision on the treatability study is subject to Paragraph II.B.1.b. of the SOW.

67. a. If Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 63 at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607.

b. Except only to the extent that Paragraph II.B.1.b. of the SOW limits the accrual of penalties during the period of dispute resolution for a failure to install treatment systems, nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA, except only to the extent that Paragraph II.B.1.b. of the SOW limits penalties for a failure to install treatment systems. However, stipulated penalties paid by defendants shall be credited against any award of penalties for the same violation.

68. No payments made under this Section shall be tax deductible for Federal tax purposes.

XIX. COVENANTS NOT TO SUE BY PLAINTIFF

69. In consideration of the actions that will be performed and the payments that will be made by the Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraph 70 of this Section, the United States covenants not to sue or to take administrative action against Defendants pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Oversight Costs. These covenants not to sue shall take effect upon the receipt by EPA of the payments required by Paragraph 39 of Section XIII (Reimbursement of Response Costs). These covenants not to sue are conditioned upon the complete and satisfactory performance by Defendants of their obligations under this Consent Decree. These covenants not to sue extend only to the Defendants and do not extend to any other person.

70. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 69. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Defendants to meet a requirement of this Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(3) liability for damages for injury to, destruction of, or loss of natural resources;

(4) criminal liability;

(5) liability for violations of federal or state law which occur during or after implementation of the Cleanup; and

(6) liability for additional response actions undertaken by U.S. EPA at the Site, any costs associated with these response actions, or any other Future Response Costs.

71. In the event EPA determines that Defendants have failed to implement any provisions of the Work in an adequate or timely manner, EPA may perform any and all portions of the Work as EPA determines necessary. Defendants may invoke the procedures set forth in Section XVII (Dispute Resolution) to dispute EPA's determination that the Defendants failed to implement a provision of the Work in an adequate or timely manner as arbitrary and capricious or otherwise not in accordance with law. Such dispute shall be resolved on the administrative record. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Oversight Costs that Defendants shall pay pursuant to Section XVII (Reimbursement of Response Costs).

72. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY DEFENDANTS

73. Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, including, but not limited to, any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 111, 112, 113 or any other provision of law, or any claims arising out of response activities at the Site. However, the Defendants reserve, and this Consent Decree is without prejudice to, actions against the United States based on negligent actions taken directly by the United States (not including oversight or approval of the Defendants' plans or activities) that are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXI. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

74. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims,

demands, and causes of action which each party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a party hereto.

75. With regard to claims for contribution against Defendants for matters addressed in this Consent Decree, the Parties hereto agree that the Defendants are entitled to such protection from contribution actions or claims as is provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2).

76. The Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

77. The Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 30 days of service of the complaint on them. In addition, Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial.

78. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses

based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XIX (Covenants Not to Sue by Plaintiff).

XXII. ACCESS TO INFORMATION

79. Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Defendants shall also make available to EPA for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

80. Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b), including all appeal rights under law. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents

or information when they are submitted to EPA, or if EPA has notified Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Defendants.

81. The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

82. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXIII. RETENTION OF RECORDS

83. Until 10 years after the Defendants' receipt of EPA's notification pursuant to Paragraph 36.b. of Section XI (Certification of Completion of the Cleanup), each Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Defendants' receipt of EPA's notification pursuant to Paragraph 36.b. of Section XI (Certification of Completion), Defendants shall also instruct their contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

84. At the conclusion of this document retention period, Defendants shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Defendants shall deliver any such records or documents to EPA. The Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the

document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

85. Each Defendant hereby certifies, individually, that it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) and 122(e) of CERCLA and Section 3007 of RCRA.

XXIV. NOTICES AND SUBMISSIONS

86. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DJ # 90-11-3-412

and

Chief, Emergency Response Branch, HSE-5J
Office of Superfund
United States Environmental Protection Agency
Region V
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

and

Sherry Estes
Office of Regional Counsel
United States Environmental Protection Agency
Region V
77 West Jackson Blvd.
Chicago, Illinois 60604-3590

As to the State:

Craig Schroer
Indiana Dept. of Environmental Management
5500 W. Bradbury
Indianapolis, IN 46241

As to the Defendants:

H. Stephen Nye
Defendants' Project Coordinator
EIS Environmental Engineers, Inc.
1701 N. Ironwood Drive
South Bend, Ind. 46635

XXV. EFFECTIVE DATE

87. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVI. RETENTION OF JURISDICTION

88. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XVII (Dispute Resolution) hereof.

XXVII. APPENDICES

89. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the SOW.

"Appendix B" is the description and/or map of the Facility.

"Appendix C" contains the institutional controls.

XXVIII. COMMUNITY RELATIONS

90. EPA will develop a community relations plan, which will include an appropriate role for the Defendants. Defendants shall cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Defendants shall participate in the preparation of such information for dissemination to the public and Defendant Accra Pac and Defendants' Project Coordinator shall participate in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXIX. MODIFICATION

91. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Defendants. All such modifications shall be made in writing.

92. No material modifications shall be made to the SOW without written notification to and written approval of the United States, Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Defendants.

93. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

94. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate.

Defendants consent to the entry of this Consent Decree without further notice.

95. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXI. SIGNATORIES/SERVICE

96. Each undersigned representative of a Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this document.

97. Each Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Defendants in writing that it no longer supports entry of the Consent Decree.

98. Each Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that party with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth

in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS _____ DAY OF _____, 19__.

_____
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Accra Pac, Inc., and Kenneth R. Everett and Diana Lee Power, in their capacities as Personal Co-Representatives of the Estate of Warner Baker, relating to the Accra Pac Site.

FOR THE UNITED STATES OF AMERICA

Date: _____ _____

Acting Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Date: _____ _____

FRANK BENTKOVER
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

United States Attorney
Northern District of Indiana

Date: _____ By: _____

CLIFFORD D. JOHNSON
Assistant United States Attorney
Northern District of Indiana
204 S. Main Street
South Bend, Indiana 46601

United States v. Accra Pac, Inc., et. al
Consent Decree Signature Page

Date: July 21, 1993

VALDAS V. ADAMKUS
Regional Administrator, Region 5
U.S. Environmental Protection Agency
77 W. Jackson Blvd.
Chicago, Ill. 60604

United States v. Accra Pac, Inc., et. al
Consent Decree Signature Page

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Accra Pac, Inc., relating to the Accra Pac Superfund Site.

FOR ACCRA PAC COMPANY, INC.

Date: 5/27/93

Name

President
Title

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: SATISH SHAH

Title: PRESIDENT

Address: 2730 MIDDLEBURY ST. ELKHART, IN. 46516

Tel. Number: 219-295-0000 (EXT. 224)

United States v. Accra Pac, Inc., et. al
Consent Decree Signature Page

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Accra Pac, Inc., relating to the Accra Pac Superfund Site.

FOR Kenneth R. Everett and Diana Lee Power, in their capacities as Personal Co-Representatives of the ESTATE OF WARNER BAKER

Date: June 15, 1993

Diana Lee Power

Name Diana Lee Power
Co-Personal Representative of
the Estate of Warner Baker, Deceased
Title

Date: 6-15-93

Name Kenneth R. Everett
Co-Personal Representative of
the Estate of Warner Baker, Deceased
Title

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: David L. Mirkin
Malcolm J. Tuesley, Jr.

Title: Attorneys

Address: 112 W. Jefferson Boulevard
Suite 400 Norwest Bank Building
South Bend, IN 46601

Tel. Number: (219) 232-3393

APPENDIX A

SCOPE OF WORK
FOR RESPONSE ACTION AT THE
ACCRA PAC SITE IN
ELKHART, INDIANA

I. PURPOSE

The purpose of this Scope of Work (SOW) is to implement the response action necessary to abate, mitigate and/or eliminate the release or threat of release of hazardous substances at the Site, as defined in Section IV of the Consent Decree, and to properly dispose of and/or treat hazardous substances located there.

II. DESCRIPTION OF THE WORK TO BE PERFORMED

A. General Provisions

1. All response work performed pursuant to this Consent Decree/SOW shall be under the direction and supervision of a qualified professional engineer. Defendants have designated H. Stephen Nye of EIS Environmental Engineers, Inc. as their qualified professional engineer responsible for direction and supervision. Mr. Nye has been pre-approved by EPA. With the exception of Mr. Nye, EPA retains the right to disapprove of any, or all, of the engineers, contractors and/or subcontractors retained by the Defendants. In the event EPA disapproves of a selected engineer or contractor, Defendants shall retain a different engineer or contractor to perform the work, and such selection shall be made within thirty (30) business days following EPA's disapproval. The names of these contractors, subcontractors, or engineers shall also be subject to EPA disapproval.

2. All work shall be conducted in accordance with the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, 40 U.S.C. §§9601 et seq., the National Contingency Plan (NCP), 40 CFR §§300 et seq., and the EPA Guidance.

3. Any deliverables, plans, technical memoranda, reports (other than progress reports), specifications, schedules and attachments required by the Consent Decree and SOW are, upon approval by EPA, incorporated into the Consent Decree. Any non-compliance with such EPA approved reports, plans, specifications, schedules, and attachments shall be considered a failure to achieve the requirements of the Consent Decree and may subject Defendants to the penalties set forth in Section XVIII (Stipulated Penalties) of the Consent Decree.

B. Work and Deliverables

1. Within 60 calendar days after the lodging of the Consent Decree, the Defendants shall submit to the EPA a work plan for the design of the cleanup (an Engineering Design Study Plan) which shall include plans and schedules for implementation of the following tasks:

a. Design Sampling and Analysis (S&A) Plan, including a Quality Assurance Project Plan (QAPP) in accordance with Section VI (Quality Assurance, Sampling, and Data Analysis) of the Consent Decree.

b. Treatability Study, which will include a study of alternatives (in which the EIS report dated September 1990 may be referenced) for soil remediation[1] systems, groundwater treatment systems, and air emission remediation systems (including an evaluation of which, if any, federal and/or state standards are ARARs for air stripper air emissions), and which will evaluate the effectiveness and implementability of such systems to meet performance standards and applicable ARARs, and provide defendants' proposed alternatives. EPA shall review the Study pursuant to Section IX. (Submissions Requiring Agency Approval). EPA's review and action on the Treatability Study decisions on remedial alternatives and of applicable ARARs for the air remediation system shall also be subject to the public participation requirements of 40 C.F.R. 300.415 (m)(3) and (4). After EPA has considered and prepared responses to the public comments received, EPA's decisions on remedial alternatives and of applicable ARARs for the air remediation system shall be implemented, subject only to the Dispute Resolution procedures set forth in Section XVII (Dispute Resolution) and Paragraph 54. However, no stipulated or other penalties resulting from a failure to install the above treatment systems in the Treatability Study shall accrue for the period of dispute resolution regarding the above treatment systems in the Treatability Study, until a decision has been rendered on the dispute by the district court. Any party

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[1] The words "remediation" and "treatment" are used interchangeably in this Scope of Work.

may appeal the decision of the district court, to the extent permitted by law. If defendants appeal any such decision by the district court and the final decision does not modify the district court's decision on ARARs and the treatment system, Defendants shall pay a stipulated penalty of $ 25,000 which need not be escrowed, and no other penalty resulting from a failure to install the above treatment systems in the Treatability Study.

c. Pre-design Work Plan

d. Preliminary Design Submittal

e. Final Design Submittal

f. Construction Quality Assurance Plan

g. Schedule for Completion of Work

In addition, within 60 calendar days after the lodging of the Consent Decree, a Health and Safety Plan must be submitted for the field design activities. The site safety and health plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, and EPA requirements, including, but not limited to, 29 CFR Part 1910.

2. The Engineering Design Study Plan, the Work Plan, and other submitted documents shall demonstrate that the Defendants can properly conduct the actions required by this Consent Decree and SOW.

3. Upon approval of the Engineering Design Study Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Defendants shall implement the plan. The Defendants shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Engineering Design Study Plan in accordance with the approved schedule for review and approval pursuant to Section IX (Submissions Requiring Agency Approval) of the Consent Decree. Unless otherwise directed by EPA, Defendants shall not commence further Cleanup Design activities at the Site prior to approval of the Engineering Design Study Plan.

4. The preliminary design submittal shall include, at a minimum, the following:

a. Design criteria;

b. Results of treatability studies;

c. Results of additional field sampling and pre-design work;

d. Project delivery strategy;

e. Preliminary plans, drawings and sketches;

f. Required specifications in outline form; and

h. Preliminary construction schedule.

5. The final design submittal shall include, at a minimum, the following:

a. Final plans and specifications;

b. Operation and Maintenance Plan;

c. Construction Quality Assurance Project Plan (CQAPP);

d. Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and

e. Contingency Plan.

The CQAPP, which shall detail the approach of quality assurance during construction activities at the site, shall specify a quality assurance official ("QA Official"), independent of the Construction Contractor, to conduct a quality assurance program during the construction phase of the project.

6. Within 60 days after the approval of the final design submittal, but in no event prior to entry of this Consent Decree, Defendants shall submit to EPA and the State a work plan for the performance of the Cleanup at the Site ("Work Plan"). The Work Plan shall provide for construction of the Cleanup, in accordance with the SOW, as set forth in the design plans and specifications in the approved final design submittal. Upon its approval by EPA, the Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as they submit the Work Plan, Defendants shall submit to EPA and

the State, a Health and Safety Plan for field activities required by the Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including but not limited to, 29 C.F.R. § 1910.120.

7. The Work Plan shall include the following:

a. The schedule for completion of the Cleanup;

b. Method for selection of the contractor;

c. Methodology for implementation of the Construction Quality Assurance Plan;

d. A groundwater monitoring plan;

e. Methods for satisfying permitting requirements;

f. Methodology for implementation of the Operation and Maintenance Plan;

g. Tentative formulation of the Cleanup team;

h. Procedures and plans for the decontamination of equipment and the disposal of contaminated materials.

i. Method for determining the baseline contaminant concentration in the uppermost groundwater aquifer.

j. Method(s) for determining the points of compliance, for both the soil and groundwater, with the Performance Standards set forth in this SOW.

The Work Plan also shall include a schedule for implementation of all Cleanup tasks identified in the final design submittal and shall identify the initial formulation of the Defendants' Cleanup Project Team (including, but not limited to, the Supervising Contractor).

8. Upon approval of the Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Defendants shall implement the activities required under the Work Plan. The Defendants shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Work Plan in accordance with the approved schedule for review and approval pursuant to Section IX (Submissions Requiring

Agency Approval) of the Consent Decree. Unless otherwise directed by EPA, Defendants shall not commence physical on-site activities at the Site prior to approval of the Work Plan.

9. Site Security

The Defendants shall fence the site in order to prevent access to the site and vandalism to the site response action equipment. Fencing of the site shall comply with 329 IAC 3-16-5 and shall consist of a minimum six-foot (6') high chain link perimeter fence and gates sufficient to allow for installation and operation of equipment necessary for implementing the Response Actions. It shall be appropriately posted at 100 foot intervals and on all gates warning the public that public access is forbidden and that the property contains hazardous substances. Signs shall contain the name(s) and telephone numbers of person(s) to contact in case of emergency. The fence will be installed prior to site Response Actions, described herein.

10. Access

Defendants shall secure access to the site as set forth in Section VII (Access) of the Consent Decree for the purpose of implementing the work required by the Consent Decree and SOW, including the installation and operation and maintenance of the fence, sampling, and extraction and treatment of soils and groundwater on those portions of the site not presently owned by the Defendants as well as those portions owned by the Defendants. Unconditional access shall be provided for representatives of the EPA as well.

11. Installation, Operation and Maintenance of Groundwater Extraction, Collection, Treatment and Discharge System.

The Defendants shall design, construct, operate and maintain an on-site groundwater extraction, collection, treatment and discharge system as approved in the Treatability Study, to capture and remove contaminated groundwater at and adjacent to the site, unless EPA after review of the Treatability Study, approves in-situ treatment of groundwater as an alternative to meet performance standards.

The Defendants shall report the existing baseline concentration of total Volatile Organic Compounds (VOC) detected in the uppermost aquifer according to the schedule in the approved Work Plan. The groundwater extraction, collection, treatment and discharge system will be operated and maintained until a 95% reduction of the aforementioned baseline

concentration of VOCs is achieved at each compliance point. Compliance with this Performance Standard shall be verified at the points of compliance and using the method approved by EPA at the time of Work Plan approval.

During operation of this system, the Defendants shall implement the Groundwater Field Sampling Plan as approved by the EPA. This program shall be designed to detect changes in the chemical concentrations of total VOCs in the groundwater at and adjacent to the site. Monitoring will be conducted at a minimum of twice per year while the soil and groundwater remediation systems are in place.

When a 95% reduction of the baseline contaminant concentration in the groundwater is achieved, the system will be shut down, but not dismantled. The shut down period will be determined by calculation of the time required for the contaminants to migrate from the sources identified in Figures 4.3 and 4.4 of the EIS Environmental Engineers, Inc. Study completed in September 1990 (the EIS study) to the monitoring wells. This calculation will be based on the average hydraulic conductivity and will be submitted to EPA for approval.

After the shut down period, the groundwater monitoring wells will be sampled on a quarterly basis for a period of one (1) year. If, after that year, the total VOC concentration indicates a sustained reduction of 95% or greater of the baseline contaminant concentration in the groundwater, the system can be dismantled. If after that one year period of sampling, 95% reduction of the baseline contaminant concentration of the groundwater has not been maintained, then the system will be restarted and the process repeated as outlined above and in the approved Work Plan.

12. Installation, Operation and Maintenance of Soil Remediation System

The Defendants shall design, construct, operate and maintain a soil remediation system, as approved in the Treatability Study, to treat the contaminated soils identified in Figures 4.3 and 4.4 of the EIS study. The Defendants shall operate the approved soil remediation system until the total of the concentrations of the 15 VOCs identified in Table 7.2 of the EIS study do not exceed 1 ppm. Compliance with this Performance Standard shall be verified at the points of compliance and using the method approved by EPA at the time of Work Plan approval.

It is expected that the soil treatment system will reduce the source of contamination to the groundwater. However, if at any time after one (1) year of operation of the soil treatment system identified in the Work Plan, the Defendants

believe that the groundwater monitoring results indicate that the soil treatment system is not significantly lowering the baseline concentrations in the groundwater, Defendants may petition EPA to consider a modification or change in the soil treatment system. Any such petition for modification, however, will require soil and groundwater data verifying the need for the change or modification and the appropriate engineering and design data for the proposed change or modification. The decision to approve such modification shall be made by the EPA, subject to the dispute resolution procedures of the Consent Decree.

13. Excavation of the Multi-component Contaminant

The two small, isolated "hot spots" of the contaminant identified as multi-component residual (found at boreholes B-2 and B-3, as documented in the EIS report, dated September, 1990), shall be sampled and analyzed according to an EPA-approved plan. A draft of this sampling plan shall be submitted with the Engineering Design Study Plan, and the sampling results shall be submitted with the preliminary design submittal of the Work Plan. Based on the results of this sampling and analysis, Defendants shall propose a plan for excavation and/or treatment and/or disposal of the multi-component residual in the Work Plan, which plan shall be approved or modified by the EPA. Any treatment or disposal of the excavated material shall comply with applicable regulations, including RCRA, if applicable, or the Indiana regulations governing treatment and disposal of special wastes, if applicable. The disposal or treatment facility shall be approved by EPA. Defendants shall sample the excavation areas to determine that all of the multi-component residual, to a level not exceeding 1 ppm, has been properly excavated, and shall present the results to the EPA. If the sampling reveals that all of the multi-component residual has not been excavated to a level of 1 ppm, then Defendants will excavate additional areas until the 1 ppm level is reached.

14. Installation, Operation and Maintenance of Air Emission Remediation System.

If pursuant to the Treatability Study referenced at paragraph II.B.1.b. of this SOW, it is determined that applicable ARARs require air emission control equipment, the Defendants shall design, construct, operate and maintain a system, as approved in the Treatability Study, that will insure that the VOC emissions from both the groundwater and the soils remediation systems will be collected and treated to the applicable or relevant and appropriate requirements (ARARs) or cleanup standards before being released into the atmosphere.

15. Defendant's Project Coordinator shall be designated in accordance with Section X (Project Coordinators) of the Consent Decree. The EPA has designated Kenneth Theisen, of the Emergency and Enforcement Response Branch, Response Section No. 3, as its On-Scene Coordinator. The On-Scene Coordinator and the Project Coordinator shall be responsible for overseeing the implementation of this Consent Decree and SOW. The Work Plan shall provide that, to the maximum extent possible, communication between the Defendants and the EPA, and all documents, reports and approvals, and all other correspondence concerning the activities relevant to this Order, shall be directed through the On-Scene Coordinator and the Project Coordinator. During implementation of the Work Plan, the OSC and the Project Coordinator shall, whenever possible, operate by consensus, and shall attempt in good faith to resolve disputes informally through discussion of the issues. The Work Plan shall indicate that Defendants will comply with all instructions of the On-Scene Coordinator which are consistent with CERCLA and the NCP.

16. The Work Plan shall provide that EPA and the Defendants shall each have the right to change their respective designated On-Scene Coordinator or Project Coordinator. EPA shall notify the Defendants, and Defendants shall notify EPA as early as possible before such a change is made. Notification may initially be verbal, but shall promptly be reduced to writing.

17. Schedules for implementation of activities will be provided in the Work Plan. No extensions to these time frames shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by EPA.

18. Defendants shall provide written quarterly progress reports to the On-Scene Coordinator regarding the actions and activities undertaken under this Consent Decree. The format and contents shall be as set forth in Section VIII (Reporting Requirements) of the Consent Decree.

C. Completion of the Cleanup

1. Within 90 days after Defendants conclude that the Cleanup has been fully performed and the Performance Standards have been attained, Defendants shall schedule and conduct a pre-certification inspection to be attended by Defendants and EPA. If, after the pre-certification inspection, the Defendants still believe that the Cleanup has been fully performed and the

Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section IX (Submissions Requiring Agency Approval) of the Consent Decree within 60 days of the inspection.

2. This report shall summarize the actions taken to comply with this SOW. The report shall contain, at a minimum: identification of the site, a description of the locations and types of hazardous substances encountered at the site upon the initiation of work performed under this SOW, a chronology and description of the actions performed (including both the organization and implementation of response activities), a listing of the resources committed to perform the work under this SOW (including financial, personnel, mechanical and technological resources), identification of all items that affected the actions performed under the SOW and discussion of how all problems were resolved, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, and a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork accrued during the action (e.g., manifests, contracts, permits).

3. In the report, a registered professional engineer and the Defendants' Project Coordinator shall state that the Cleanup has been completed in full satisfaction of the requirements of the Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Defendant or the Defendants' Project Coordinator:

> "To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

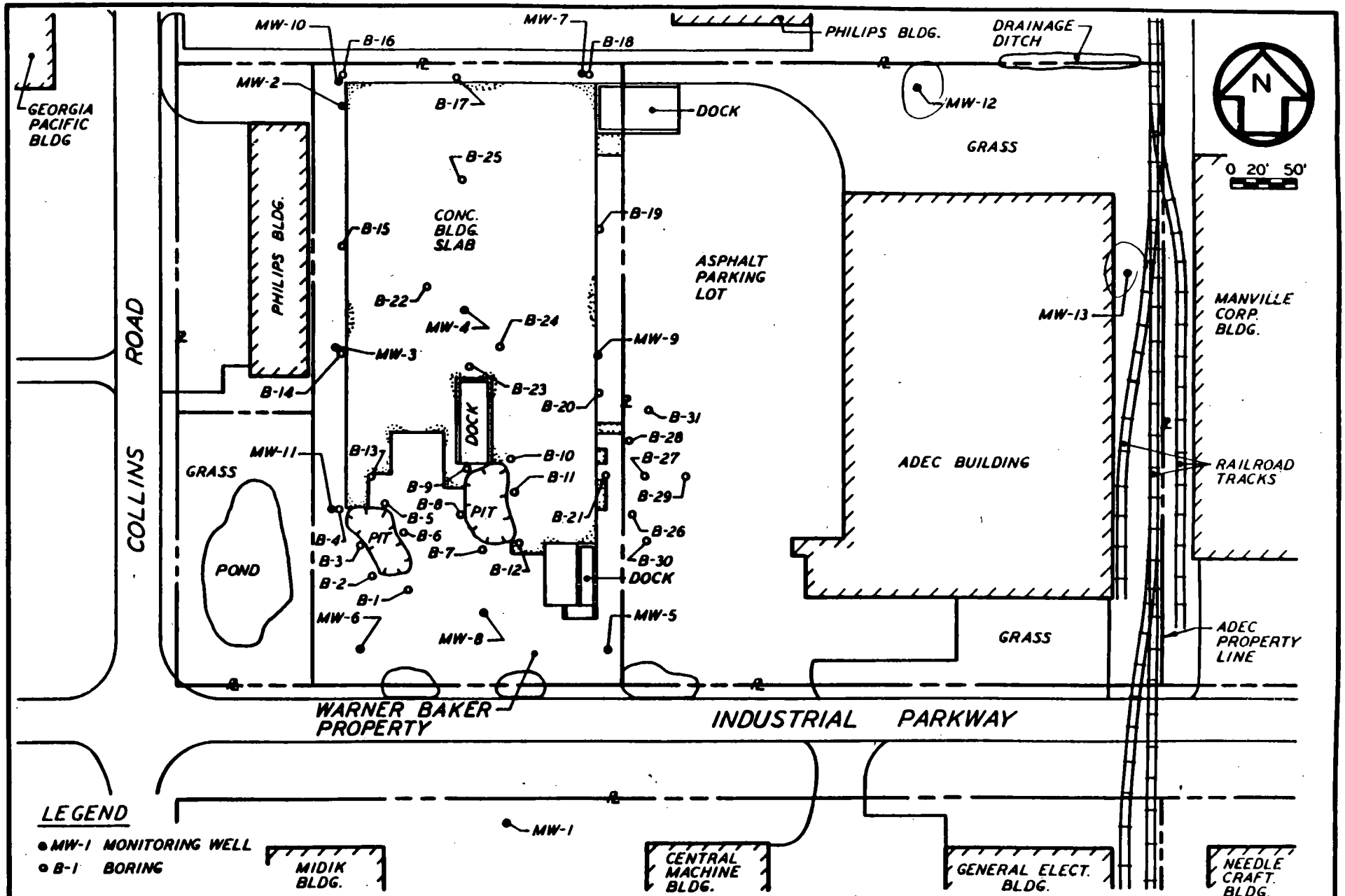

FIGURE 2.1

OFF SITE BORING AND MONITORING WELL LOCATIONS

WARNER BAKER / ACCRA PAC — ELKHART, INDIANA

EIS ENVIRONMENTAL ENGINEERS, INC.

1270-2012-88

APPENDIX C
DEED RESTRICTIONS

Kenneth R. Everett and Diana Lee Power, in their capacities as personal co-representatives of the Estate of Warner Baker, hereby impose restrictions on the following described real estate which is part of the Accra Pac Removal Site in Elkart County, in the State of Indiana:

The West Two Hundred Twenty (220) feet of Lot Numbered Two (2) as said lot is known and designated on the recorded Plat of Middleton Run Industrial Acres, in the City of Elkhart, Concord Township, Elkart County, Indiana, said plat being recorded in Plat Record 9, page 8 of the records of the Recorder of Elkart County, Indiana.

1. There shall be no residential use or any further commercial development of the Real Estate that would allow for the continued presence of humans, other than any presence necessary for implementation of the Work under the Consent Decree. The prohibited uses shall include, but not be limited to, any filing, grading, excavating, building, construction, drilling, mining, farming, or other development, or placing waste material within the Facility, except with the approval of the United States Environmental Protection Agency ("U.S. EPA") as consistent with the Consent Decree and the Statement of Work (SOW) which is Appendix A to the Consent Decree; and

2. There shall be no tampering with, or removal of, the containment or monitoring systems that remain on the property affected by these deed restrictions as a result of implementation of any response action by U.S. EPA, or any party acting as agent for U.S. EPA, or any party acting pursuant to a Consent Decree with U.S. EPA; provided that the response action is selected and/or undertaken or ordered by U.S. EPA pursuant to Section 104 and/or Section 106 or CERCLA; and

3. There shall be no use of, or activity at, the property affected by these deed restrictions that may interfere with, damage, or otherwise impair the effectiveness of any response action (or any component there of) selected and/or undertaken by U.S. EPA, or any party acting as agent for U.S. EPA or any party acting pursuant to a Consent Decree with U.S. EPA, pursuant to Section 104 and/or Section 106 of CERCLA, except with the written approval of U.S. EPA, in consultation with the State of Indiana, and consistent with all statutory and regulatory requirements.

All the above restrictions shall run with the land and be binding upon the owners and their respective successors, assigns and transferees. The restrictions shall remain in full force and effect unless and until U.S. EPA issues a determination in writing or a court of competent jurisdiction rules to either modify or

terminate the restrictions in response to a petition from an owner of the affected property, as provided below. A copy of these restrictions shall be provided to all respective successors, assigns and transferees.

After all the work, as defined in the Consent Decree, the SOW, and the approved Engineering Design Study has been completed and upon achievement of the Performance Standards, consistent with the Consent Decree, the SOW, and the approved Engineering Design Study, the affected property owner may petition the Regional Administrator of the U.S. EPA, Region V, or his delegate, to modify or terminate the deed restrictions. Any petition for modification or termination shall state the specific provision sought to be modified or terminated and the proposed additional uses of the property. Any proposed modifications or terminations must not be inconsistent with the requirements set forth in the Consent Decree, SOW, or the approved Engineering Design Study.

The petitioning property owners shall provide Accra Pac, Inc. and the Estate of Warner Baker (if the affected property has been transferred to another party) with a copy of any petition for modification or termination of deed restrictions submitted to U.S. EPA. Accra Pac or the Estate of Warner Baker may object to the proposed use of the property on the grounds that such use may expose humans, animals or plants to soil contaminants remaining at the Site, cause wind dispersal or surface run-off to carry soil contaminants off the Site, or cause migration of contaminants beyond the Site boundaries, or into the groundwater, in excess of the Performance Standards set forth in the SOW and the approved Engineering Design Study. Any party so objecting shall notify the owners, the U.S. EPA, and the State of Indiana in writing, within thirty (30) days of receipt of the proposed modification or termination. The Regional Administrator may allow or deny the owner's petition in whole or in part. Any dispute as to the Regional Administrator's determination is subject to the jurisdiction of the United States District Court for the Northern District of Indiana. However, U.S. EPA reserves its right to argue before the Court for record review and the appropriate standard of review of the Regional Administrator's determination.

If any provision of these Deed Restrictions is held to be invalid by any court of competent jurisdiction, the invalidity of such provision shall not affect the validity of any other provisions hereof. All such other provisions shall continue unimpaired in full force and effect.

If any provision of this Deed Restriction is also the subject of any law or regulations established by any federal, state or local government, the stricter of the two standards shall prevail.

No provision of these Deed Restrictions shall be construed so as to violate any applicable zoning laws, regulations or

ordinances. If any such conflict does arise, the applicable zoning laws, regulations or ordinances shall prevail, unless they are inconsistent with CERCLA.

The undersigned persons executing these Deed Restrictions on behalf of the Estate of Warner Baker represent and certify that they are duly authorized and have been fully empowered to execute and deliver these Deed Restrictions.

IN WITNESS WHEREOF, Kenneth R. Everett and Diana Lee Power, in their capacities as personal co-representatives of the Estate of Warner Baker, owner of the above-described property, have caused these Deed Restrictions to be executed on this _____day of _____, 1992.

OWNER

By: _____

By: _____

By: _____

ATTEST:

_____

33. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

X. PROJECT COORDINATORS

34. Defendants have designated H. Stephen Nye of EIS Environmental Engineers, Inc., who has been pre-approved by EPA, as their Project Coordinator, and Plaintiff has designated Kenneth Theisen, of the Emergency and Enforcement Response Branch, as its Project Coordinator. Within 20 days of lodging this Consent Decree, Defendants and EPA will notify each other, in writing, of the name, address and telephone number of their respective designated Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Defendants' Alternate Project Coordinator or any change in Defendants' Project Coordinator shall be subject to disapproval by EPA. The Project Coordinator and the Alternate Project Coordinator shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Defendants' Project Coordinator shall not be an

attorney for any of the Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

35. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

XI. CERTIFICATION OF COMPLETION

36. Completion of the Cleanup

a. Within 90 days after Defendants conclude that the Cleanup has been fully performed and the Performance Standards have been attained, Defendants shall schedule and conduct a pre-certification inspection to be attended by Defendants and EPA. If, after the pre-certification inspection, the Defendants

still believe that the Cleanup has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section IX (Submissions Requiring Agency Approval) within 60 days of the inspection. In the report, a registered professional engineer and the Defendants' Project Coordinator shall state that the Cleanup has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a responsible corporate official of a Defendant or the Defendants' Project Coordinator:

> "To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity to review and comment by the State, determines that the Cleanup or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Defendants in writing of the activities that must be undertaken to complete the Cleanup and achieve the Performance Standards. EPA will set forth in the notice a schedule for performance of such activities

consistent with the Consent Decree and the SOW or require the Defendants to submit a schedule to EPA for approval pursuant to Section IX (Submissions Requiring Agency Approval). Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XVII (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Cleanup has been fully performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Defendants. This certification shall constitute the Certification of Completion of the Cleanup for purposes of this Consent Decree, including, but not limited to, Section XIX (Covenants Not to Sue by Plaintiffs). Certification of Completion of the Cleanup shall not affect Defendants' obligations still remaining under this Consent Decree.

XII. EMERGENCY RESPONSE

37. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Defendants shall, subject to

Paragraph 38, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Defendants shall notify the EPA Waste Management Division, Emergency Response and Enforcement Branch, Region V. Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XIII (Reimbursement of Response Costs).

38. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action or to seek an order from the Court to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site.

XIII. REIMBURSEMENT OF RESPONSE COSTS

39. Defendants shall pay to the United States eight payments of $31,250, for a total of $250,000, which shall include interest at the current CERCLA rate of 3.49%, beginning 30 days after the effective date of this Consent Decree and continuing every 3 months thereafter for 7 additional payments, in reimbursement of Past Response Costs, by Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice lockbox bank, referencing CERCLA Number 054H, U.S.A.O. file number 8801275, and DOJ Case Number 90-11-3-412. Payment shall be made in accordance with instructions provided by the Plaintiff to the Settling Defendants upon execution of the Consent Decree. Payments by EFT must be received at the U.S. D.O.J. lockbox bank by 11:00 A.M. (Eastern Time) to be credited on that day. Defendants may, after making the first payment and submitting the treatability study pursuant to paragraph 11.b. above, petition that based on the past and projected costs of the Work and Defendants' current and projected financial condition, that EPA in its unreviewable discretion, in writing, extend, defer or waive the payment of response costs. Defendants will provide EPA all information reasonably needed to review such petition.

40. Defendants shall reimburse the United States for all Oversight Costs not inconsistent with the National Contingency Plan incurred by the United States. The United States will send Defendants a bill requiring payment that includes an Itemized

Cost Summary on a periodic basis. Defendants shall make all payments within 60 days of Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 41. The Defendants shall make all payments required by this Paragraph by a certified check or checks made payable to "EPA Hazardous Substance Superfund," and referencing CERCLA Number 054H and DOJ Case Number 90-11-3-412. The Defendants shall forward the certified check(s) to U.S. EPA, Superfund Accounting, P.O. Box 70753, Chicago, Ill. 60673, and shall send copies of the check to the United States as specified in Section XXIV (Notices and Submissions) and Chief, Solid Waste and Emergency Response Branch, CS-3T, Office of Regional Counsel, U.S. Environmental Protection Agency, 77 West Jackson Blvd., Chicago, Illinois 60604-3590.

41. Defendants may contest payment of any Oversight Costs under Paragraph 40 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 60 days of receipt of the bill and must be sent to the United States pursuant to Section XXIV (Notices and Submissions). Any such objection shall specifically identify the contested Oversight Costs and the basis for objection. In the event of an objection, the Defendants shall within the 60 day period pay all uncontested Oversight Costs to the United States in the manner described in Paragraph 40. Simultaneously, the Defendants shall establish an interest